

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

MICHELE R. FABERY, RN, BSN,

and her husband,

CHARLES FABERY,

Plaintiffs,

V.

MID-SOUTH OB-GYN, P.L.L.C.,

HEATHER O. DONATO, M.D.,

MICHAEL L. STACK, M.D., and

**DONALD L. HAMBY, M.D.**

Defendants.

NO. 06-2136 DV  
JURY DEMANDED

PLAINTIFFS' MOTION FOR AN IN LIMINE ORDER JUDICIALLY ESTOPPING DEFENDANTS  
FROM RETRACTING, MODIFYING OR IN ANY WAY CHANGING ANY CONCLUSIVE  
ADMISSION IN THE ANSWER (DKT. ENTRY 2) IN RESPONSE TO PLAINTIFFS' COMPLAINT  
(DKT. ENTRY 1) (WITH MEMORANDUM IN SUPPORT)

## Motion

COME NOW plaintiffs, Michele R. Fabery and Charles Fabery (hereinafter “the Faberys”), and, respectfully, move the Court to enter an in limine order judicially estopping, by a court-ordered stipulation, defendants, Heather O. Donato, M.D.(hereinafter “**Dr. Donato**”), Michael L. Stack, M.D. (hereinafter “**Dr. Stack**”), Donald L. Hamby, M.D. (hereinafter “**Dr. Hamby**”) and

Mid-South OB-GYN, PLLC (hereinafter "**Mid-South**") (hereinafter collectively "**Defendants**"), from offering any proof, evidence, testimony or in any other way, during the trial of the instant case, that modifies, retracts or in any other way changes or attempts to change any statement of fact or opinion admitted, on the record in the instant case, by Defendants' answer (Dkt. Entry 2) to allegations made by the Faberys in the Faberys' complaint (Dkt. Entry 1).

The Faberys attach as **Exhibit A hereto** a chart that copies, verbatim, each admitted allegation in the complaint (Dkt. Entry 1) beside which appears the answer, verbatim, to each said allegation by which Defendants admit the allegation. As attached, Exhibit A hereto is incorporated herein by reference the same as if it were quoted here verbatim.

### Memorandum

On January 31, 2008, the Faberys filed (Dkt. Entry 137) a supplemental memorandum in support of the Faberys' prior motions concerning judicial admissions (Dkt. Entry 57 and Dkt. Entry 58), filed on November 19, 2007 and November 20, 2007, the former being entitled "Plaintiff's Motion in Limine to Receive in Evidence as Judicial Admissions Answers by Defendants to Deposition Questions and Memorandum in Support Thereof" and the latter being entitled "Plaintiff's Motion in Limine to Declare Admissions of Defendants in Defendant's Answer to Be Conclusive Admissions to Be Submitted to the Jury the Same as Stipulations and Memorandum in Support Thereof." In this supplemental memorandum and the November 2007 motions and memoranda, the Faberys discuss the reasons and reference the authorities in support of the instant motion. Here, the Faberys adopt and incorporate by reference the supplemental memorandum (Dkt. Entry 137) and the prior memoranda in support of the relief sought by the instant motion.

Respectfully submitted,

LARRY E. PARRISH, P.C.

By: s/ Larry E. Parrish  
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### CERTIFICATE OF CONSULTATION

Counsel for Movants consulted with counsel for Defendants about the instant motion, on January 31, 2008; in the process, it was agreed that counsel for Defendants and counsel for Movants cannot agree that the relief sought by the instant motion should be granted.

s/ Larry E. Parrish  
Larry E. Parrish

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the **Plaintiffs' Motion For An In Limine Order Judicially Estopping Defendants From Retracting, Modifying Or In Any Way Changing Any Conclusive Admission In The Answer (Dkt. Entry 2) In Response To Plaintiffs' Complaint (Dkt. Entry 1) (With Memorandum In Support)** has been forwarded by electronic means via the Court's electronic filing system to:

J. Kimbrough Johnson, Esq.  
[JohnsonK@thomasonlaw.com](mailto:JohnsonK@thomasonlaw.com)

Joseph M. Clark, Esq.  
[ClarkJ@thomasonlaw.com](mailto:ClarkJ@thomasonlaw.com)

on the 1<sup>st</sup> day of February 2008.

s/ Larry E. Parrish  
Larry E. Parrish